

Domestic Violence Coordinating Council
Children and Domestic Violence Committee Meeting

May 23, 2016

The Children and Domestic Violence Committee met on May 23, 2016 at 10 a.m. at the Department of Services for Children, Youth and their Families in New Castle County. Attending the meeting were Secretary Carla Benson-Green (DSCYF), Shirley Roberts (DFS), Marcey Rezac (Peoples Place), Dana Harrington Conner (Widener Law School), Mariann Kenville-Moore (DCADV), Linda Shannon (DFS), Susanne Miller (Child Inc.), Sonya Tull (Child Inc.), Addie Asay (Family Court), Ellen Cooper (Family Court), and Natasha Smith (DVCC staff).

Called to order: Secretary Benson-Green called the meeting to order.

Introductions: Introductions were made by those in attendance.

Minutes from February 22, 2016: Minutes were approved with the following amendment under the Announcement section of the minutes: Linda Shannon announced that the Quality Improvement Center on Child Welfare Involved Children and Families Experiencing Domestic Violence grant is currently taking applications.

Old Business

The topic of the rebuttable presumption against custody for a perpetrator of domestic violence has been an agenda item for the Committee for several years. The primary concern is that the statute defining perpetrator of domestic violence is narrow and therefore few cases trigger the rebuttable presumption in 13 Del. C. §705A. Professor Dana Harrington Conner was asked to attend the meeting to discuss the rebuttable presumption statute, and the definition of a perpetrator of domestic violence in 13 Del. C. §703A(b).

To be a perpetrator of domestic violence as defined by 703A, an individual must have been convicted of a felony level offense, or one of the following misdemeanors: assault in the third degree; reckless endangering in the second degree; reckless burning or exploding; unlawful imprisonment in the second degree; unlawful sexual contact in the third degree; or criminal contempt of a PFA based on an assault or other physical abuse, or threat of assault. Many on the Committee have expressed a concern that incidents of abuse that are charged as

a felony or assault in the third degree are often pled down to offensive touching. Offensive touching is not listed as an enumerated offense that would fall under the perpetrator of domestic violence statute, and most everyone agrees that adding offensive touching would include less serious incidents that would make the perpetrator definition too broad.

To initiate the discussion, Professor Harrington Conner distributed a draft amendment to the statute for the Committee to consider. The proposal would amend the definition of perpetrator of domestic violence to include not only criminal convictions for the enumerated offenses listed in (b), but a civil finding by a Family Court Judge or Commissioner that the individual committed one of the enumerated offenses even if the incident was pled down to a lesser offense. With the broad language, the Court could also consider those incidents where charges were not filed or where charges were dismissed. The proposed standard for this civil finding would be by clear and convincing evidence.

Additional amendments included adding terroristic threatening to the list of misdemeanor offenses, and adding civil contempt of a PFA in addition to criminal contempt. The civil contempt would still be based on a violation of the protective order because of an act of physical abuse or threat of abuse.

After a discussion, Professor Harrington Conner suggested that the DVCC reach out to other family law attorneys for input, and contact Chief Judge Newell regarding possible changes to the statute and how it could affect Family Court if additional hearings are required to make a finding that a criminal offense occurred.

The rebuttable presumption discussion continued. Shirley Roberts (DFS) introduced the issue of DFS cases as it relates to the sex offender rebuttable presumption. Secretary Benson Green stated that this committee would focus on the domestic violence portion of the statute and reach out to those that specialize in sexual offenses to consider changing the Sex Offender portion of the statute. Addie Asay (Family Court) stated that she would reach out to the Sex Offender Management Board to see if there is any interest in changing the sex offender portion of the statute.

In maintaining the focus on domestic violence, a suggestion was made to examine the possibility of conducting domestic violence Batterers Intervention programs (BIP) while individuals are incarcerated. Funding the programs was briefly

discussed and a suggestion was made to determine if funds collected from marriage licenses in Delaware (known as the DV Fund) could be used to finance BIP in prison. Natasha Smith (DVCC) stated that she would check to see if the DV fund could be used for BIP in prison and to also reach out to Commissioner Coupe (DOC) about whether or not batterers' intervention could be held in Delaware prisons and relay the information to the DVCC Treatment Committee.

Family Court Enhancement Project

Ellen Cooper (Family Court) states that the Family Court Enhancement Project Management Team has met over the past few months with the technical assistance providers on this project. Ellen went on to discuss the updates with the two project subcommittees, the Differentiation Subcommittee and the Access to Justice Subcommittee. Ellen discussed that the Differentiation Subcommittee is currently conducting an impact study in which they examine how domestic violence information gets in front of a Family Court Judge. Another question this subcommittee is examining is if Domestic Violence is presented by a Pro Se litigant or by an attorney and is one weighed more heavily than the other. And once this information is received how the Judge/Commissioner reaches their decision. This subcommittee is in the middle of analysis and will release the results of the impact study when the group decides it is appropriate for the public.

Ellen went on to provide an update about the Access to Justice Subcommittee. Ellen states that this subcommittee has been divided into three workgroups. (listed below)

- 1) Safe, Welcoming and Helpful Resource Center – this group is analyzing the instructions given to Pro Se litigants and whether the resource center provides sufficient information for filing a custody petition. Family Court currently has instructional packets for custody that are 52 pages. This group is looking at the possibility of training for both the resource center and frontline staff. This group is also discussing the use of a training module that New Mexico Courts have used to train their frontline and resource center staff. This workgroup has also discussed the physical layout of the resource center in regards to privacy, safety and signage for Resource Center in all three counties.

- 2) PFA Day – Ending the Cattle Call – Quality on PFA Day. This workgroup has about 9 recommendations that they are working on and they are scheduled to meet on May 24th. This group is also discussing the VINE notification Program.
- 3) Triage, Assessment and Mediation. This group is discussing alternative ways to conduct mediation for those who are looking to resolve family court petitions when there has been domestic violence history.

Safe and Together Model

DFS is not able to implement the Safe and Together Model in its entirety at this time. Secretary Benson Green and DFS Director Shirley Roberts will reach out to David Mandel to see if there are any components of the Safe and Together Model that Delaware could implement even if DFS is unable to implement the entire program at this time.

CDNDSC Recommendation

Linda Shannon (DFS) stated that the slides currently used by OCA are accurate based upon the Structured Decision Making Model used by DFS. Linda believed that the scenarios used in the OCA training could be improved. Linda had an upcoming meeting with OCA and will discuss the slides with them at that time. Linda Shannon will email Natasha Smith (DVCC) if there are any changes to the OCA training slides as well as give an update at the next meeting.

The next Meeting Date is scheduled for Monday, September 26th 10 am.